2020/2021

Annual Report

CANADIAN CONSTITUTION FOUNDATION

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Contents

About the CCF 3

Foreword 5

Ongoing Litigation 6

New Cases 8

COVID-19 9

Runnymede Society 11

Primary Documents 13

Communications 14

Audited Financials 16

Contact 17

CANADIAN CONSTITUTION FOUNDATION

ABOUT THE CCF

The Canadian Constitution Foundation (CCF) is a registered charity, independent and non-partisan. We defend the constitutional rights and freedoms of Canadians in the courts of law and public opinion. Our charitable registration number is: 86617 6654 RR0001. The CCF is also registered as a 501(c)(3) public charity with the US Internal Revenue Agency.

OUR MANDATE

INDIVIDUAL FREEDOMS

(Section 2 of the Charter of Rights and Freedoms):
freedom of association
freedom of peaceful assembly
freedom of conscience and religion
freedom of expression, belief and opinion

LIBERTY

(Section 7 of the Charter of Rights and Freedoms):
The right to life, liberty and security of the person.

EQUAL OPPORTUNITY

(Section 15 of the Charter of Rights and Freedoms):
The right to equality before the law for all individuals.

Foreword

Dear CCF friends and supporters,

On behalf of the entire CCF team, we hope that this report finds you and your loved ones well. As we head into the second year of the pandemic, the need for vigilance against unjustified governmental intrusions on liberty has never been clearer. We have been incredibly grateful to welcome so many Canadians to Freedom's Defence Team over the last year as we held all levels of government accountable for unconstitutional measures.

Everything the CCF does is supportive of our mission: to protect the constitutional liberties of Canadians through courts of law, public opinion, and education. As the pandemic has stretched on, CCF has become Canada's go-to authority on constitutional liberties.

Holding governments accountable in this pandemic has meant frequently taking them to court, whether for punitive measures against safe demonstrations of the right to free expression (R. v. Bristol, where CCF counsel compelled the government to drop charges against a lone masked protestor), needlessly draconian hotel quarantine measures, or arbitrary limits on church attendance even where strict social distancing was enforced.

Of course, CCF has also continued its advocacy in the court of public opinion, sharing its legal analysis in the media. The CCF appeared in the news over 2,000 times in the last year.

The CCF also continues its work fighting for liberty outside of the pandemic context. In March, we celebrated a landmark victory in our Charter challenge for free expression. A judge of the Ontario Superior Court declared s. 91 of the Canada Elections Act, which sought to prevent "fake news" but really just threatened individual citizens with fines and jail time for innocent expressions of political opinions, contrary to the s. 2(b) guarantee of free expression. The government has chosen not to appeal the trial judgment, which means that Canadians can enjoy free, unfettered political debate during the 2021 federal election period.

We also celebrated a free speech victory following the release of a decision of the Saskatchewan Court of in favour of nurse Carolyn Strom. The Court set aside a decision by the Saskatchewan nursing regulator to impose a fine and costs, totaling $26,000. The disciplinary action was imposed by the regulator on Ms. Strom for comments she had posted on Facebook criticizing end of life care her grandfather had received, and advocating for improvements to the healthcare system. The Court's decision affirmed the right to participate in social and political discourse.

The pandemic has also exposed the unsustainable nature of Canada's bans on all forms of private health insurance, as governments look to outsource delayed surgeries and procedures to private clinics. We hope that this will prompt a rethinking of the balance between private and public delivery in the health care system, and believe that the Charter prevents governments from imposing blanket bans on private health care. Although our Charter challenge for health care choice was dismissed by a B.C. trial court judge in September 2020, an appeal was heard by the BC Court of Appeal in June 2021, and we hope the panel will decide in favour of individual health care choice. In any event, we expect the case to be finally decided by the Supreme Court of Canada in the near term.

While CCF focuses on advocacy in the courts and public sphere, sustaining a culture of liberty starts in our nation's educational system, hence the importance of the Runnymede Society, CCF's law student membership group which promotes vigorous debate on constitutional law and individual liberty. In August 2021, we were thrilled to welcome Kristopher Kinsinger, J.D./L.L.M., to the role of National Director. Kristopher is looking forward to a busy academic year returning to in-person debates and spearheading important constitutional scholarship.

We are hopefully moving into the next and hopefully final phase of the pandemic, but the legacy of intrusions on liberty and government overreach will be with us for a long time to come. Accordingly, we are keeping a watchful eye on how governments respect the rule of law and individual rights in imposing vaccine passport requirements, as well as unwinding emergency powers and restrictions on free movement. History shows us that when governments expand their powers in an emergency, they are usually loath to retract them.

We thank you for taking the time to learn more about our work, and for your support. If you are not already a donor and are looking for ways to support liberty, I invite you to join Freedom's Defence Team whether as a monthly or one-time donor.

JOANNA BARON
Executive Director

Litigation

Healthcare Freedom and Patient Rights
Cambie v. MSCB et al.

After years of delays—caused in large part by government lawyers trying to bankrupt the plaintiffs—the patient plaintiffs received a disappointing trial decision in September 2020. In the decision, Justice Steeves found that there was a violation of security of the person for individuals who are suffering from degenerative or deteriorating conditions and waiting for surgery in the government system beyond the medically acceptable wait times. However, Justice Steeves found that the patients had not demonstrated that their suffering was not in accordance with the principles of fundamental justice.

We disagree with this decision and believe it is inconsistent with *Chaoulli* and with existing Charter law on the right to security of person.

In June 2021, the BC Court of Appeal heard this case. And a hard-fought injunction remains in place protecting important clinics and patients while we wait for the decision. Regardless of the outcome at this level of court, we expect the case to make its way ultimately to the Supreme Court of Canada. By having the rights of patients recognized in the highest court in Canada, a precedent can be set for all Canadians seeking more freedom and better health outcomes.

Free Expression CCF VICTORY!
Strom v. The Saskatchewan Registered Nurses Association

In October, 2020, the Saskatchewan Court of Appeal released a decision in favour of Carolyn Strom. The Court of Appeal set aside a decision by the Saskatchewan nursing regulator to impose a fine and costs, totalling $26,000. The disciplinary action was imposed by the regulator on Ms. Strom for comments she had posted on Facebook criticizing end of life care her grandfather had received, and advocating for improvements to the healthcare system.

The right to participate in social and political discourse is an important aspect of personal autonomy, and free speech is the heart of a liberal democracy. This was a great victory for Canadians' right to free expression.

For more about the **Healthcare Freedom** case, see yourhealthcantwait.ca

YOUR HEALTH CAN'T WAIT

Litigation OVERVIEW

In spite of challenges to liberty from many fronts, we launched several new cases in the last year and succeeded in furthering the cause of freedom in Canada's courtrooms and in Canadian public opinion.

Litigation

Free expression and political speech

Canadian Constitution Foundation v. Attorney General of Canada

CCF VICTORY!

On February 19, the Ontario Superior Court of Justice released a decision striking down s. 91(1) of the *Canada Elections Act* as an unjustified infringement on free expression. This was a major victory for the CCF, free expression and Canadian democracy.

The law, which was amended in 2019, made it an offence to attempt to influence an election by making or publishing certain types of false statements about political candidates and other public figures during the election period.

The legislation did not require that the individual making the false statement be aware that it is false, potentially imposing fines and even imprisoning people over political speech made in good faith. This would have created a chilling effect on the free exchange of political ideas and opinions and been a form of unjustified censorship. This CCF victory improves the electoral process and helps protect the fundamental right to freedom of expression in Canada.

Corporations and the freedom from cruel and unusual punishment

CCF VICTORY!

Quebec (Attorney General) v 9147-0732 Quebec Inc.

In November, 2020 the Supreme Court of Canada released a decision that adopted CCF's textualist approach to constitutional interpretation in a case involving protection from "cruel and unusual punishment". The CCF was an intervenor in the case, and argued in favour of finding that corporations have a right to be free from cruel and unusual punishment.

While the court concluded that corporations are not within the scope of the Charter's protection against cruel and unusual punishment, they did adopt the CCF's textualist approach to constitutional interpretation. This is an affirmation of the arguments that we made before the Supreme Court, which were based on consistent precedent. The court's adoption of a textualist approach will be helpful in guiding the court in a predictable and practical method of constitutional interpretation in future cases.

Protecting the proper interpretation of our constitution

ONCA Toronto (City Council) v Ontario

Following a decision in favour of the CCF's position as an intervenor in 2019 by the Ontario Court of Appeal, this case was then heard at the Supreme Court of Canada. We currently await this decision.

Our intervention was focused on how courts should approach the hard work of constitutional interpretation. In the Ontario Court of Appeal decision, a majority of the court decided in a manner that ensured respect for the limits of the judicial role in deciding when and how governments may limit Charter rights, as well as an interpretive approach rooted in the text of the Charter itself.

New Cases

Free expression in comedy

Ward v Quebec Human Rights Tribunal

In February, 2021, the CCF intervened in favour of the right to free expression in an essential Supreme Court case involving Quebec comedian Mike Ward. Mr. Ward was fined by the Quebec Human Rights Commission which concluded that jokes made by Mike Ward about Jeremy Gabriel, a boy who lives with a disability, were discriminatory and violated the dignity of Mr Gabriel. Mike Ward was ordered to pay $42,000 to Mr Gabriel and his mother. This is an outrageous and absurd result for Canadians who rightly believe that comedy is protected by the *Charter of Rights and Freedoms*.

Allowing the Quebec government to set the limits on comedy through fines creates a chilling effect for other performers in the province and is an undue limit on the right to freedom of expression. Speech, even controversial or repugnant speech, is protected from unjustified state intrusion. And even if Mr. Ward's comedy routine was distasteful, it should not be policed by the government. Like all comedy, it should be policed by audiences. We await the court's decision as of August, 2021.

Image by Lisa Gansky (CC 2.0)

Defending property rights against civil forfeiture CCF VICTORY!

AG (Ontario) v 947014 Ontario and Norwood Estate

In May, 2021, the CCF intervened in favour of property rights in a new civil forfeiture case in Ontario. Norwood Estate involves assets, including a family home, that were seized as part of a drug trafficking prosecution where the accused later died before his trial. The Application for the forfeiture of the family home did not proceed, and a determination of whether the home was the proceeds of crime was never concluded. Despite this, the court relied upon a provision of Ontario's *Civil Remedies Act* to approve a forced settlement between the deceased's estate and his mother, who alleges to have a claim to a portion of the home.

In its decision in July, 2021, the Ontario Court of Appeal agreed with the interpretation of the law that we put forward. And we successfully stopped the government from expanding how they can dispense with seized property

Intervention at Supreme Court for public interest organizations

Council of Canadians with Disabilities v. British Columbia (Attorney General)

The CCF intervened in favour of the Council of Canadians with Disabilities' (CCD) right to stand in court as a public interest litigant. The CCF believes the participation of organizations like the CCD in constitutional litigation is essential to a healthy civil society.

If British Columbia's stringent test for public interest standing is accepted it will greatly impede the ability for Canadians to participate in constitutional litigation. We will be filing our factum in September, 2021.

COVID-19: Protecting liberty during crises

Since early 2020, the COVID-19 pandemic caused Canadian governments at every level to enact emergency policies to manage rationed public health resources and control the spread of the virus. As predicted by the CCF, government accountability and preservation of the rule of law has been heavily tested since the onset of this pandemic.

The Canadian Constitution Foundation has remained vigilant in defending constitutional rights and freedoms while COVID-19 has been the dominant public policy issue in Canada. This has meant walking a difficult line trying to champion rights and individual liberty while also trying to preserve our limited resources for specific issues where we had a reasonable chance of success in the courts.

The CCF launched many legal cases in the last year against unjustifiable restrictions on individuals' individual liberty.

In June, 2021, the CCF secured a victory for Robert Bristol of Kingston who had received a ticket for protesting alone and masked in front of Kingston city hall. This case was an essential defence of free speech and the right to protest. If the government can use this as a reason to limit protests of their policies, they could just as easily limit protests for creating other slightly risky scenarios.

In March, 2021 the CCF launched a legal challenge of the federal quarantine hotel requirement. Forcing Canadians to pay up to $2,000 out of pocket for hotel expenses cannot be justified when more proportional policy responses are possible. Our challenge to the federal quarantine hotel policy dealt with the expert advisory report that included recommendations to end the policy. Our individual applicants were uniquely situated travellers who needed to leave Canada for compassionate reasons. We dropped the hotel quarantine case after a decision by the Ontario Superior Court and an amendment to the regulations allowing exemptions for compassionate travel were made.

The CCF also supported other challenges against specific regulations made arbitrary or unnecessary by other rules and the best available COVID-19 data. This included a challenge against church attendance caps and gym lockdowns in Ontario. The gym case resulted in another amendment allowing for disabled persons to use gyms as part of their therapy. This resulted in many gyms being able to partially reopen in Ontario.

Looking forward, the CCF remains committed to pushing back against regulatory overreach as well ensuring that all COVID-19 measures do not translate to permanent expansion of government authority. All temporary COVID-19 regulations should be just that --temporary.

COVID-19: Protecting liberty during crises

2020/2021

Sept | Oct | Nov | Dec | Jan | Feb | Mar | April | Jun | Jul | Aug

August 26, 2020: CCF releases report grading government leaders on their respect for the constitution during COVID-19.

September 29, 2020: CCF releases documents obtained in a freedom of information request that reveals police misuse of COVID-19 database.

September - November, 2020: Restrictions amp up across the country during the so-called "Second Wave".

December 1, 2020: CCF launches campaign searching for plaintiffs to challenge unconstitutional COVID-19 restrictions.

December 18, 2020: CCF intervenes in favour of religious freedom against Ontario lockdown measures.

March 8, 2021: CCF launches legal challenge of the federal quarantine hotel policy.

April 16, 2021: CCF condemns new COVID-19 police powers introduced by Ontario government.

April 22, 2021: CCF releases "Know Your Rights" eBook.

May 17, 2021: CCF contributes to "Life After COVID" eBook by Second Street.

April - May, 2021: Restrictions return during the so-called "Third Wave".

June 24, 2021: Crown drops charges against CCF client in victory for freedom of expression and the right to protest under COVID restrictions.

June 30, 2021: CCF launches search for potential applicants impacted individuals for domestic vaccine passport case.

Summer, 2021: A phase of re-opening is followed by a return of restrictions and new policy considerations rife with new constitutional issues. The CCF remains committed to targeting overly broad, discriminatory and/or arbitrary restrictions.

RUNNYMEDE SOCIETY

Mark Mancini, outgoing National Director

Kristopher Kinsinger, National Director

Despite the challenges posed by campus closures, the Runnymede Society had an excellent year and is poised to expand its presence in student and lawyer chapters across Canada as we emerge from the COVID-19 pandemic.

Runnymede student chapters held over 20 online events during the 2020-2021 school year, featuring speakers such as Justice Russell Brown of the Supreme Court of Canada as well as other leading Canadian scholars and jurists. Our 2021 Law and Freedom Conference was successfully held via Zoom with assistance from the team at Hart House on March 12 to 13. We were able to attract over 110 remote participants to this virtual event, which concluded with a well-received keynote address by Justice Malcolm Rowe of the Supreme Court of Canada.

This past April, Mark Mancini stepped down as the national director of the Runnymede Society to pursue his doctorate at the University of British Columbia. Building on the work of Joanna Baron, our first national director, Mark successfully solidified Runnymede's status as a major Canadian legal institution.

Two of Mark's most significant accomplishments include the inauguration of the Runnymede Fellows program, a paper competition for Canadian law students that consists of a $4,000 prize and an opportunity to be published, and the launch of The A.V. Dicey Law Review, a new periodical jointly published by Runnymede, Advocates for the Rule of Law, and LexisNexis.

Runnymede's new national director, Kristopher Kinsinger, plans to continue these programs while also pursuing new strategic partnerships and initiatives. Kristopher recently fulfilled the requirements for his LLM at McGill University, following his graduation from Osgoode Hall Law School in 2019 and call to the Ontario bar in 2020. He completed his articles of clerkship with a national law firm in Ontario, and currently serves as an officer on the Canadian Bar Association's Constitutional and Human Rights Section and on the board of directors of Christian Legal Fellowship. Kristopher is an emerging legal scholar and commentator whose work has appeared in periodicals such as the National Post and The Supreme Court Law Review.

In July, Kristopher successfully hosted a virtual Student Leadership Conference to prepare our student chapter executives for their return to campus this fall. Conference speakers included Justice Peter Lauwers of the Ontario Court of Appeal, employment lawyer Kathryn Marshall, and Professor Richard Albert of the University of Texas at Austin. Feedback following the conference was overwhelmingly positive, and Kristopher is working closely with our student leaders as they plan events for the upcoming school year.

Pandemic restrictions permitting, we anticipate that the 2022 Law and Freedom Conference will return to the University of Toronto's Hart House from January 21 to 22, featuring keynote lectures and panels on high profile legal issues. To help promote Runnymede's presence in Quebec, one of these panels will take place exclusively in French, a first for the Law and Freedom Conference. In addition to our regular programming, we also intend to hold an academic symposium at Hart House prior to the start of the conference with a select group of scholars and jurists to workshop papers that we hope to have subsequently published in a special edition of The Supreme Court Law Review with LexisNexis.

Additionally, efforts are underway to reboot our lawyers' chapter program at major cities throughout Canada. Several Runnymede alumni have stepped forward to serve as lawyer chapter leaders and will be working with Kristopher to plan social events, speaker sessions, and professional development programs for lawyers in their respective cities. Our goal is for these lawyer chapters to expand Runnymede's presence within the legal profession and help us pursue new funding partnerships for our conferences and events with Canadian law firms.

PrimaryDocuments.ca

In 2020/2021, the Primary Documents project published its first book, been cited in a Supreme Court case, and has further increased the collection's holdings.

Our project has published its first book, an eBook, titled *The Quebec Resolutions*. Edited by Charles Dumais and published by the CCF, this book includes never-before published drafts of the Quebec Conference, which ultimately led to the *Constitution Act, 1867*. Available for free download at PrimaryDocuments.ca.

The Primary Documents project has also launched a new "Reports" feature. These reports cover the drafting and legislative history of sections of Canada's Constitution. One of said reports, "Compilation of primary documents to assist in interpreting the meaning of the term, 'Peace, order, and good government' in Section 91 of the *Constitution Act, 1867*" was cited in the Supreme Court case *References re Greenhouse Gas Pollution Pricing Act*. Our team is in the midst of compiling other such reports, prioritizing heavily litigated sections and sections that may appear before the courts in the near future.

Our website, too, continues to grow, rapidly expanding its collection. We now have over 3,800 documents online, adding hundreds more this year. Our new documents touch many areas of Canada's constitutional history—from pre-Confederation newspapers to debates on Canada's Charter and beyond. Up to date, we have been cited as a resource in library guides and course syllabi in at least 14 universities across Canada.

Communications

The CCF had a very successful year in expanding our communications, with particularly large growth in our online reach. The CCF remains the leading liberty-minded legal charity in Canada.

Overview:

- In 2020/2021, the Canadian Constitution Foundation was mentioned directly by name more often than in any previous year and appeared in over 2,000 articles online and in print in Canadian and American media.

- These media mentions included CCF cases, campaigns and projects as well as articles and statements made by CCF staff in the media.

- Since late November 2020, new communications campaigns have led to exponential growth of our email newsletter lists used for fundraising and communicating the CCF's work.

- Online petitions gathered over 8,000 signatures in the last year in support of the CCF's work to stop unconstitutional COVID-19 restrictions.

Social Media

+48%

Facebook Likes

16,275 Facebook page likes
to 24,062 Facebook page likes
(Sept 1, 2020 to Sept 1, 2021)

+117%

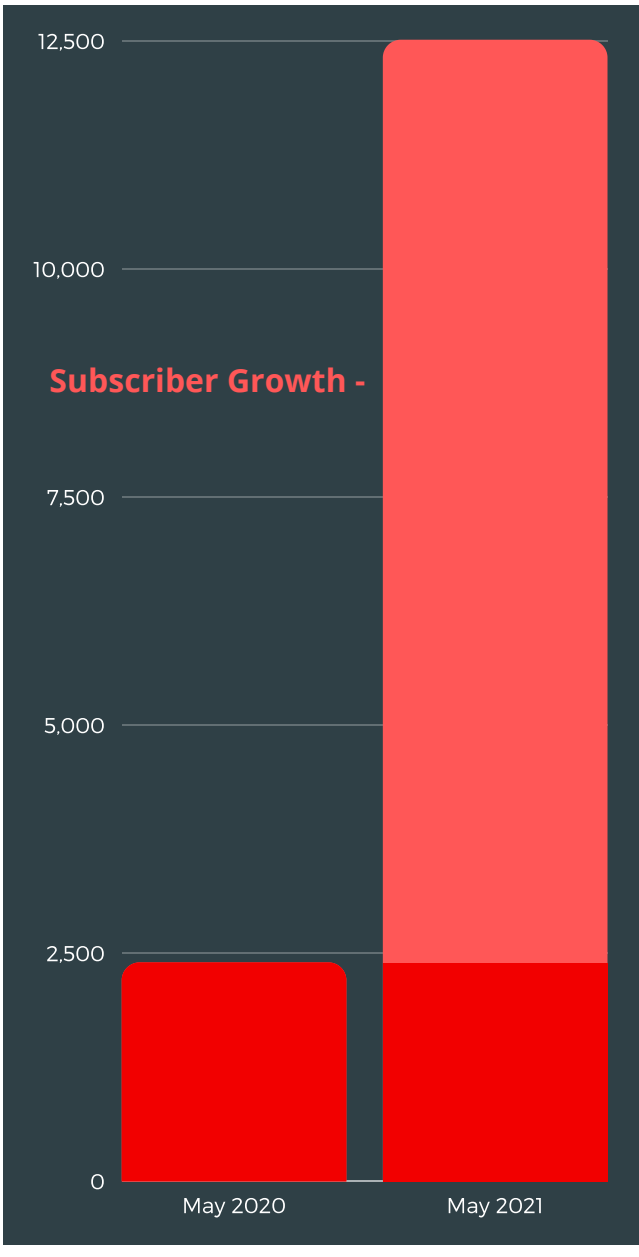
Twitter Followers

2,546 Twitter followers
to 5,519 Twitter followers
(Sept 1, 2020 to Sept 1, 2021)

Online Fundraising

- Expanded newsletter lists yielded massive increase to online donations with much higher total giving in 2021 so far than in all of 2020.

- A plain-text appeal written by Litigation Director Christine Van Geyn resulted in ~$35,000 online donations from March 15 to March 22. Almost all of these donations came from first-time donors.



Freedom Update

- **2,390** active subscribers (Sept 1, 2020) to over **12,500** active subscribers (Sept 1, 2021). This is a growth rate of over **400%.**

- These campaigns included a mixture of petitions against unjust COVID restrictions, searches for potential applicants, and eBook releases providing valuable legal information to our followers.

Audited Financials

REVENUE: OVER **94%** FROM PRIVATE DONORS & FOUNDATIONS.

Contributions & Grants:	$1,520,479
Restricted Contributions:	$1,632,241
Other Revenue:	$2,525
Government Programs:	$184,653
Total Revenue:	$3,339,898

EXPENSES: **70%** GOES TO PROJECT ACTIVITIES.

LESS THAN **20%** GOES TO STAFF SALARIES.

Project Activities:	$1,804,455
Staff Salaries	$488,146
Office & Administration	$206,054
Travel & Fundraising	$51,097
Amortization & Realized Loss	$3,839
Total Expenses:	$2,553,591

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The Canadian Constitution Foundation (CCF) is a registered charity, independent and non-partisan. We defend the constitutional rights and freedoms of Canadians in the courts of law and public opinion.

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